

## REMARKS

Claim 1 has been amended. Claims 1-7 are pending in the application.

### **I. Independent Claim 1 and Dependent Claims 2-7 Novel Over Barz.**

Claims 1-7 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,902,625 to Barz *et al.* ("Barz"). Claim 1 of the subject application, as amended, recites in part:

coagulating the cheese dairy product to form a coagulum comprising curd and whey ...

cutting the coagulum and removing the whey thereby leaving the curd ...

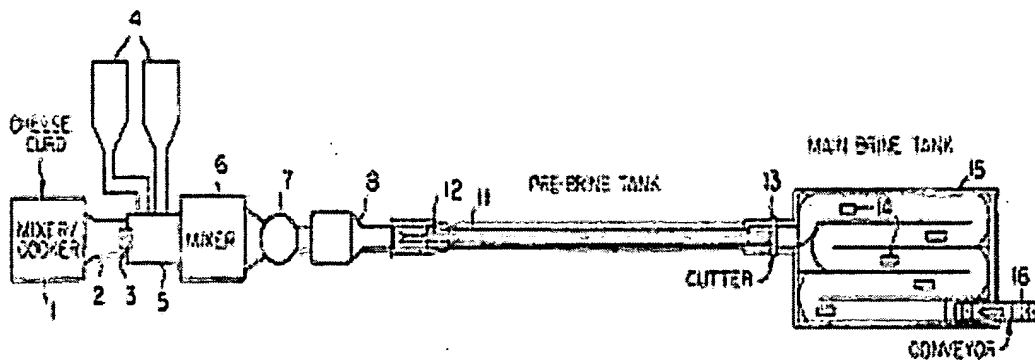
heating the curd using steam and kneading the curd to produce a fibrous mass ...

before or during heating, adding to the curd or to the fibrous mass an extender, the extender comprising at least one source of fat ...

Under 35 U.S.C. §102(b), a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. MPEP §2131. The Office Action relies upon Barz as supporting the rejection. The Applicants respectfully traverse the rejection. However, in order to expedite prosecution of the application, Applicants offer the above amendments to claim 1 and the following remarks.

Barz describes a process for making cheese that involves a conventional mixer/cooker 1, which is known to utilize a hot water bath (as in the traditional "pasta filata process"). Barz, col. 1, lines 43-56. For example, various other patents describe the traditional pasta filata process as involving a hot water bath. See, e.g., U.S. Patent No. 6,440,481, col. 1, lines 32-34 ("pasta filata cheeses are traditionally prepared by draining whey from the curd, immersing the curd in hot water ..."); U.S. Patent No. 6,086,926, col. 1, lines 29-32 ("pasta filata type cheeses are characterized by a unique plasticizing and kneading treatment, which is carried out on the fresh curd in hot water.").

In addition, Barz also describes the use of an additional, separate mixer 6 that is installed between the mixer/cooker 1 and an extruder, as shown in Figure 7 of Barz below:



More particularly, as discussed in Barz, the heating, kneading, and stretching of the cheese curd is performed in the mixer/cooker 1. Barz explains that in the prior art, the heated, fibrous mass is extruded into a desired shape and deposited into a tank of cold brine. Barz explains that an additional, and separate, mixer 6 is installed between the mixer/cooker 1 and the extruder at the brine tank. This additional mixer 6 is used to mix one or more additives into the cheese. This additional mixing step is performed after or subsequent to heating, kneading and stretching. (Barz, col. 6, lines 32-39, col. 9, line 52 – col. 10, line 2; col. 22, lines 14-23 (between steps (e) and (f)).

For example, the “Summary of the Invention” explains that a Generally Recognized As Safe (GRAS) food additive is thoroughly mixed “between steps (e) and (f).” Step (e) is “heating, kneading and stretching...” and step (f) is “forming the heated cheese into a shape.” Barz, col. 2, lines 47-62 (emphasis added); col. 22, lines 14-23 (between steps (e) and (f). Thus, Barz describes a process in which a GRAS food additive is mixed after the heating, kneading and stretching of the cheese curd.

Accordingly, Barz fails to disclose or suggest all of the elements and limitations of independent claim 1. Initially, Barz fails to disclose or suggest “heating the curd using steam” as recited in claim 1. Nowhere in Barz is there a description of using steam for heating the cheese curd. Rather, Barz merely describes a conventional mixer/cooker 1.

Additionally, Barz fails to disclose or suggest “before or during steam heating, adding to the curd or to the fibrous mass an extender ...” In contrast, Barz describes adding a GRAS additive after step (e), i.e., after heating, kneading and stretching of the cheese curd. Further, Barz specifically explains that it mixes additives using a separate mixer 6. Accordingly, Barz does not disclose or suggest adding an extender before or during heating.

Based on the forgoing amendments and remarks, the Applicants respectfully submit that Barz does not anticipate independent claim 1. Thus, the Applicants respectfully request that the rejection of independent claim 1 under 35 U.S.C. §102(b) be withdrawn. Further, the Applicants respectfully submit that the rejection 35 U.S.C. §102(b) of dependent claims 2-7 also be withdrawn since these dependent claims incorporate all of the elements and limitations of independent claim 1.

The Applicants also respectfully submit that there is no suggestion or motivation to modify Barz to derive the Applicants' claimed process considering the significant system and processing modifications that would be involved. For example, Barz requires a hot water bath (as in the traditional "pasta filata process"), in order to maintain the homogeneous fibrous mass of heated, unripened cheese. Without a hot water bath, the homogeneous fibrous mass would break down. Further, Barz clearly teaches away from "before or during steam heating, adding to the curd or to the fibrous mass an extender ..." since Barz is specifically directed to mixing an additive after heating the curd with separate mixing equipment, i.e., between heating, kneading and stretching step (e) and forming step (b), as repeatedly discussed in Barz.


## **II. Conclusion.**

Applicants respectfully request that the application is in condition for allowance and respectfully request that a timely Notice of Allowance be issued in this case. If there are any remaining issues that can be resolved by telephone, Applicants invite the Examiner to contact the undersigned at the number indicated below.

Respectfully submitted,

**BINGHAM McCUTCHEN, LLP**

Dated: June 17, 2004

By:   
\_\_\_\_\_  
Gary D. Lueck  
Registration No. 50,791  
Attorneys for Applicants

Three Embarcadero Center, Suite 1800  
San Francisco, California 94111-4067  
Telephone: (213) 680-6400  
Facsimile: (213) 680-6499